

SENATE BILL NO. 234

INTRODUCED BY GILLAN, R. BROWN, MOSS, SCHMIDT, WILLIAMS, JENT, LARSEN, HAWKS, GRINDE,
BECKER, BOSS RIBS, DRISCOLL, ROBERTS, REINHART, SANDS, CAFERRO, VAN DYK, MACDONALD,
COHENOUR, K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING INSURANCE COVERAGE FOR AUTISM SPECTRUM
DISORDERS; AMENDING SECTIONS 33-1-102, 33-22-706, 33-31-111, AND 33-35-306, MCA; AND
PROVIDING A DELAYED EFFECTIVE DATE ~~AND, AND AN APPLICABILITY DATE, AND A TERMINATION~~
DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Coverage of autism spectrum disorders. (1) Each group disability policy,
certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or
modified in this state must provide coverage for diagnosis and treatment of autism spectrum disorders for a
covered ~~dependent~~ child 18 YEARS OF AGE OR YOUNGER.

(2) Coverage under this section must be provided to ~~an individual~~ A CHILD who is diagnosed with one of
the following disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental
Disorders:

- (a) autistic disorder;
- (b) Asperger's disorder; or
- (c) pervasive developmental disorder not otherwise specified.

(3) (a) Coverage under this section must include:

(i) habilitative or rehabilitative care that is prescribed, provided, or ordered by a licensed physician or
licensed psychologist, including but not limited to professional, counseling, and guidance services and treatment
programs that are MEDICALLY necessary to develop, ~~maintain~~, and restore, to the maximum extent practicable,
the functioning of the covered ~~dependent~~ child;

(ii) medications prescribed by a physician licensed under Title 37, chapter 3;

(iii) psychiatric or psychological care; and

(iv) therapeutic care that is provided ~~by a dietitian registered in this state or~~ by a speech-language

1 pathologist, audiologist, ~~nutritionist~~, occupational therapist, or physical therapist licensed in this state.

2 (b) (i) ~~Habilitative and rehabilitative care includes applied behavior analysis that uses the design,~~
3 ~~implementation, and evaluation of environmental modifications through behavioral stimuli and consequences to~~
4 ~~produce socially significant improvement in human behavior and that includes the use of direct observation,~~
5 ~~measurement, and functional analysis of the relationship between the covered individual's environment and~~
6 ~~behavior~~ MEDICALLY NECESSARY INTERACTIVE THERAPIES DERIVED FROM EVIDENCE-BASED RESEARCH, INCLUDING
7 APPLIED BEHAVIOR ANALYSIS, WHICH IS ALSO KNOWN AS LOVAAS THERAPY, DISCRETE TRIAL TRAINING, PIVOTAL RESPONSE
8 TRAINING, INTENSIVE INTERVENTION PROGRAMS, AND EARLY INTENSIVE BEHAVIORAL INTERVENTION.

9 (ii) ~~Applied behavior analysis covered under this section must be provided by an individual who has been~~
10 IS LICENSED BY THE BEHAVIOR ANALYST CERTIFICATION BOARD OR IS ~~certified by the department of public health and~~
11 ~~human services as a qualified provider of applied behavior analysis~~ FAMILY SUPPORT SPECIALIST WITH AN AUTISM
12 ENDORSEMENT.

13 (4) (A) Coverage for treatment of autism spectrum disorders under this section may be limited to a
14 maximum benefit of:

15 (i) \$50,000 a year: FOR A CHILD 8 YEARS OF AGE OR YOUNGER; AND

16 (ii) \$20,000 A YEAR FOR A CHILD 9 YEARS OF AGE THROUGH 18 YEARS OF AGE.

17 (B) Benefits provided under this section may not be construed as limiting physical health benefits that
18 are otherwise available to the covered ~~dependent~~ child.

19 (5) (a) Coverage under this section may be subject to deductibles, coinsurance, and copayment
20 provisions.

21 (b) Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to
22 other medical care covered under the plan may not be imposed on the coverage for autism spectrum disorders
23 provided for under this section.

24 (6) ~~Upon request of the insurer, a provider who is treating a dependent child for an autism spectrum~~
25 ~~disorder shall furnish medical records, clinical notes, or other data that substantiate that initial or continued~~
26 ~~treatment is resulting in improved physical, mental, or developmental status or the maintenance of an improved~~
27 ~~status.~~ When treatment is expected to require continued services, the insurer may request THAT THE TREATING
28 PHYSICIAN PROVIDE a treatment plan consisting of diagnosis, proposed treatment by type and frequency, the
29 anticipated duration of treatment, the anticipated outcomes stated as goals, and the frequency with which the
30 ~~treatment plan will be updated.~~ REASONS THE TREATMENT IS MEDICALLY NECESSARY. THE TREATMENT PLAN MUST BE

BASED ON EVIDENCE-BASED SCREENING CRITERIA. THE INSURER MAY ASK THAT THE TREATMENT PLAN BE UPDATED EVERY 6 MONTHS.

(7) AS USED IN THIS SECTION, "MEDICALLY NECESSARY" MEANS ANY CARE, TREATMENT, INTERVENTION, SERVICE, OR ITEM THAT IS PRESCRIBED, PROVIDED, OR ORDERED BY A PHYSICIAN OR PSYCHOLOGIST LICENSED IN THIS STATE AND THAT WILL OR IS REASONABLY EXPECTED TO:

(A) PREVENT THE ONSET OF AN ILLNESS, CONDITION, INJURY, OR DISABILITY;

(B) REDUCE OR IMPROVE THE PHYSICAL, MENTAL, OR DEVELOPMENTAL EFFECTS OF AN ILLNESS, CONDITION, INJURY, OR DISABILITY; OR

(C) ASSIST IN ACHIEVING MAXIMUM FUNCTIONAL CAPACITY IN PERFORMING DAILY ACTIVITIES, TAKING INTO ACCOUNT BOTH THE FUNCTIONAL CAPACITY OF THE RECIPIENT AND THE FUNCTIONAL CAPACITIES THAT ARE APPROPRIATE FOR A CHILD OF THE SAME AGE.

~~(7)~~(8) This section applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, school district, or other political subdivision of this state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

~~(8)~~(9) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

SECTION 2. SECTION 33-1-102, MCA, IS AMENDED TO READ:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs -- service contracts. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community

1 networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are
2 governed by chapter 31 or to the extent that the existence and operations of those networks are governed by Title
3 53, chapter 6, part 7. The department of public health and human services is responsible to protect the interests
4 of consumers by providing complaint, appeal, and grievance procedures relating to managed care community
5 networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.

6 (5) This code does not apply to workers' compensation insurance programs provided for in Title 39,
7 chapter 71, parts 21 and 23, and related sections.

8 (6) The department of public health and human services may limit the amount, scope, and duration of
9 services for programs established under Title 53 that are provided under contract by entities subject to this title.
10 The department of public health and human services may establish more restrictive eligibility requirements and
11 fewer services than may be required by this title.

12 (7) ~~This~~ Except as otherwise provided in Title 33, chapter 22, this code does not apply to the state
13 employee group insurance program established in Title 2, chapter 18, part 8.

14 (8) This code does not apply to insurance funded through the state self-insurance reserve fund provided
15 for in 2-9-202.

16 (9) (a) ~~This~~ Except as otherwise provided in Title 33, chapter 22, this code does not apply to any
17 arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political
18 subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention,
19 deductible, or self-insurance plan.

20 (b) ~~This~~ Except as otherwise provided in Title 33, chapter 22, this code does not apply to any
21 arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan,
22 or program of a single political subdivision of this state in which the political subdivision provides to its officers,
23 elected officials, or employees disability insurance or life insurance through a self-funded program.

24 (10) (a) This code does not apply to the marketing of, sale of, offering for sale of, issuance of, making
25 of, proposal to make, and administration of a service contract.

26 (b) A "service contract" means a contract or agreement for a separately stated consideration for a
27 specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair,
28 replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or
29 manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or
30 indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service.

1 A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from
2 power surges or accidental damage from handling. A service contract does not include motor club service as
3 defined in 61-12-301.

4 (11) (a) Subject to 33-18-201 and 33-18-242, this code does not apply to insurance for ambulance
5 services sold by a county, city, or town or to insurance sold by a third party if the county, city, or town is liable for
6 the financial risk under the contract with the third party as provided in 7-34-103.

7 (b) If the financial risk for ambulance service insurance is with an entity other than the county, city, or
8 town, the entity is subject to the provisions of this code."

9
10 **Section 3.** Section 33-22-706, MCA, is amended to read:

11 **"33-22-706. (Temporary) Coverage for severe mental illness -- definition.** (1) Except as provided
12 in 33-22-262(3) and subject to 33-22-262(4), a policy or certificate of health insurance or disability insurance that
13 is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for
14 the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable
15 than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may
16 be subject to managed care provisions contained in the policy or certificate.

17 (2) Benefits provided pursuant to subsection (1) include but are not limited to:

18 (a) inpatient hospital services;

19 (b) outpatient services;

20 (c) rehabilitative services;

21 (d) medication;

22 (e) services rendered by a licensed physician, licensed advanced practice registered nurse with a
23 specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when
24 those services are part of a treatment plan recommended and authorized by a licensed physician; and

25 (f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and
26 specializing in mental health.

27 (3) Benefits provided pursuant to this section must be included when determining maximum lifetime
28 benefits, copayments, and deductibles.

29 (4) (a) This section applies to health service benefits provided by:

30 (i) individual and group health and disability insurance;

- (ii) individual and group hospital or medical expense insurance;
- (iii) medical subscriber contracts;
- (iv) membership contracts of a health service corporation;
- (v) health maintenance organizations; and
- (vi) the comprehensive health association created by 33-22-1503.

(b) This section does not apply to the following coverages:

- (i) blanket;
- (ii) short-term travel;
- (iii) accident only;
- (iv) limited or specific disease;
- (v) Title XVIII of the Social Security Act (medicare); or
- (vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

- (a) schizophrenia;
- (b) schizoaffective disorder;
- (c) bipolar disorder;
- (d) major depression;
- (e) panic disorder; and
- (f) obsessive-compulsive disorder; ~~and;~~ AND
- ~~(g) autism~~ (G) AUTISM.

(7) COVERAGE FOR A CHILD WITH AUTISM WHO IS 18 YEARS OF AGE OR YOUNGER MUST COMPLY WITH [SECTION 1(3) THROUGH (5)] IF THE CHILD IS DIAGNOSED WITH:

- (A) AUTISTIC DISORDER;
- (B) ASPERGER'S DISORDER; OR
- (C) PERVASIVE DEVELOPMENTAL DISORDER NOT OTHERWISE SPECIFIED. (Terminates June 30, 2009--sec. 14,

Ch. 325, L. 2003.)

33-22-706. (Effective July 1, 2009) Coverage for severe mental illness -- definition. (1) A policy or

1 certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or
2 modified in this state must provide a level of benefits for the necessary care and treatment of severe mental
3 illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness
4 generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained
5 in the policy or certificate.

6 (2) Benefits provided pursuant to subsection (1) include but are not limited to:

7 (a) inpatient hospital services;

8 (b) outpatient services;

9 (c) rehabilitative services;

10 (d) medication;

11 (e) services rendered by a licensed physician, licensed advanced practice registered nurse with a
12 specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when
13 those services are part of a treatment plan recommended and authorized by a licensed physician; and

14 (f) services rendered by a licensed advanced practice registered nurse with prescriptive authority and
15 specializing in mental health.

16 (3) Benefits provided pursuant to this section must be included when determining maximum lifetime
17 benefits, copayments, and deductibles.

18 (4) (a) This section applies to health service benefits provided by:

19 (i) individual and group health and disability insurance;

20 (ii) individual and group hospital or medical expense insurance;

21 (iii) medical subscriber contracts;

22 (iv) membership contracts of a health service corporation;

23 (v) health maintenance organizations; and

24 (vi) the comprehensive health association created by 33-22-1503.

25 (b) This section does not apply to the following coverages:

26 (i) blanket;

27 (ii) short-term travel;

28 (iii) accident only;

29 (iv) limited or specific disease;

30 (v) Title XVIII of the Social Security Act (medicare); or

(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorder;

(d) major depression;

(e) panic disorder; ~~and~~

(f) obsessive-compulsive disorder; ~~and~~; AND

~~(g) autism~~ (G) AUTISM.

(7) COVERAGE FOR A CHILD WITH AUTISM WHO IS 18 YEARS OF AGE OR YOUNGER MUST COMPLY WITH [SECTION 1(3) THROUGH (5)] IF THE CHILD IS DIAGNOSED WITH:

(A) AUTISTIC DISORDER;

(B) ASPERGER'S DISORDER; OR

(C) PERVASIVE DEVELOPMENTAL DISORDER NOT OTHERWISE SPECIFIED."

Section 4. Section 33-31-111, MCA, is amended to read:

"33-31-111. (Temporary) Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of

1 need requirements under Title 50, chapter 5, parts 1 and 3.

2 (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary
3 interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704.
4 A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701
5 through 33-3-704.

6 (6) This section does not exempt a health maintenance organization from:

7 (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

8 (b) the provisions of Title 33, chapter 22, part 19;

9 (c) the requirements of 33-22-134 and 33-22-135;

10 (d) network adequacy and quality assurance requirements provided under chapter 36, except as
11 provided in 33-22-262; or

12 (e) the requirements of Title 33, chapter 18, part 9.

13 (7) Except as provided in 33-22-262, the provisions of Title 33, chapter 1, parts 12 and 13, Title 33,
14 chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212, 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title
15 33, chapter 19, 33-22-107, 33-22-129, 33-22-131, 33-22-136, 33-22-141, 33-22-142, 33-22-152, 33-22-244,
16 33-22-246, 33-22-247, 33-22-514, [section 1], 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply
17 to health maintenance organizations. (Terminates June 30, 2009--sec. 14, Ch. 325, L. 2003.)

18 **33-31-111. (Effective July 1, 2009) Statutory construction and relationship to other laws.** (1) Except
19 as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to a health
20 maintenance organization authorized to transact business under this chapter. This provision does not apply to
21 an insurer or health service corporation licensed and regulated pursuant to the insurance or health service
22 corporation laws of this state except with respect to its health maintenance organization activities authorized and
23 regulated pursuant to this chapter.

24 (2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its
25 representatives is not a violation of any law relating to solicitation or advertising by health professionals.

26 (3) A health maintenance organization authorized under this chapter is not practicing medicine and is
27 exempt from Title 37, chapter 3, relating to the practice of medicine.

28 (4) This chapter does not exempt a health maintenance organization from the applicable certificate of
29 need requirements under Title 50, chapter 5, parts 1 and 3.

30 (5) This section does not exempt a health maintenance organization from the prohibition of pecuniary

1 interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704.
2 A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701
3 through 33-3-704.

4 (6) This section does not exempt a health maintenance organization from:

5 (a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

6 (b) the provisions of Title 33, chapter 22, part 19;

7 (c) the requirements of 33-22-134 and 33-22-135;

8 (d) network adequacy and quality assurance requirements provided under chapter 36; or

9 (e) the requirements of Title 33, chapter 18, part 9.

10 (7) Title 33, chapter 1, parts 12 and 13, Title 33, chapter 2, part 19, 33-2-1114, 33-2-1211, 33-2-1212,
11 33-3-422, 33-3-431, 33-15-308, Title 33, chapter 17, Title 33, chapter 19, 33-22-107, 33-22-129, 33-22-131,
12 33-22-136, 33-22-141, 33-22-142, 33-22-152, 33-22-244, 33-22-246, 33-22-247, 33-22-514, [section 1],
13 33-22-521, 33-22-523, 33-22-524, 33-22-526, and 33-22-706 apply to health maintenance organizations."

14
15 **Section 5.** Section 33-35-306, MCA, is amended to read:

16 **"33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter,
17 self-funded multiple employer welfare arrangements are subject to the following provisions:

18 (a) 33-1-111;

19 (b) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare
20 arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

21 (c) Title 33, chapter 1, part 7;

22 (d) 33-3-308;

23 (e) Title 33, chapter 18, except 33-18-242;

24 (f) Title 33, chapter 19;

25 (g) 33-22-107, 33-22-131, 33-22-134, 33-22-135, 33-22-141, 33-22-142, and 33-22-152; and

26 (h) 33-22-512, [section 1], 33-22-525, and 33-22-526.

27 (2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple
28 employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

29
30 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, apply to [section 1].

2
3 NEW SECTION. SECTION 7. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT
4 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS
5 ACT].

6
7 NEW SECTION. Section 8. Effective date. [This act] is effective January 1, 2010.

8
9 NEW SECTION. SECTION 9. APPLICABILITY. [THIS ACT] APPLIES TO CONTRACTS OR POLICIES ISSUED OR
10 RENEWED ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

11
12 ~~NEW SECTION. SECTION 10. TERMINATION. [THIS ACT] TERMINATES DECEMBER 31, 2011.~~

13 - END -